BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF COMPLIANCE FILINGS FOR SUSSEX SHORES WATER COMPANY REGARDING THE PETITION OF DELAWARE DIVISION OF THE PUBLIC ADVOCATE TO REDUCE THE RATES OF REGULATED UTILITIES AS A RESULT OF THE TAX CUTS AND JOBS ACT OF 2017'S REDUCTION IN CORPORATE INCOME TAXES AND OTHER TAX CHANGES (FILED APRIL 21, 2021)	))))))))))	PSC DOCKET NO. 21-0246

ORDER NO. <u>10036</u>

AND NOW, this 25th day of May 2022, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on December 22, 2017, the President signed the Tax Cuts and Jobs Act of 2017 ("TCJA"), which became effective on January 1, 2018. The TCJA represents the first significant change in the United States federal tax laws since the 1986 Tax Reform Act. Among other things, the TCJA: (1) reduces the federal corporate income tax rate from 35% to 21%; (2) allows full and immediate expensing of short-lived capital investments for five years; and (3) increases the expensing cap from $500,000 to $1 million; and

WHEREAS, the Commission has long included in a regulated utility's operating expenses an amount of federal corporate income tax equal to what the utility would pay if it were a stand-alone company. For many years, the Commission has included in regulated utilities' operating expenses an amount of federal corporate income tax equal to 35%, and has deducted from those utilities' rate base a corresponding amount of Accumulated Deferred Income Tax ("ADIT") pursuant to 26 *Del. C.* § 102(3); and

WHEREAS, on December 27, 2017, the Delaware Division of the Public Advocate ("DPA") filed a petition requesting the Commission to open a docket to examine whether the current rates of Commission-regulated utilities required reduction as a result of the TCJA. The DPA contended that unless the Commission reduces rates in an amount which reflects the benefits that the TCJA confers on the utilities, Delaware regulated utility ratepayers will be paying unjust and unreasonable rates. The DPA requested the Commission to direct each regulated utility to file an estimate of its determination of the TCJA's effects on its cost of service and propose a procedure for changing rates to reflect those impacts on or before March 31, 2018. Additionally, should the Commission determine that any utility's rates require reduction as a result of its review of the utility's submission, the DPA asked the Commission to open a docket for each utility for which such determination was made and establish a procedural schedule for conducting an evidentiary hearing regarding the TCJA's impacts on the utility's operations and existing rates; and

WHEREAS, on January 16, 2018, the Commission approved Order No. 9166, granting the DPA's petition. The Commission directed each rate-regulated public utility to file an estimate of its determination of the TCJA's effects on its cost of service for the most recent test year available (including new rate schedules) and to propose a procedure for changing rates to reflect those impacts on or before March 31, 2018. Further, if the Commission determined that a utility's rates required reduction, it would open a new docket for each utility for which such determination was made and establish a procedural schedule for conducting an evidentiary hearing regarding the TCJA's impacts on the utility's operations and existing rates. The Commission exempted Delmarva Power & Light Company ("Delmarva") from Order No. 9166, instead directing that the effects of the TCJA on DPL's electric and natural gas base rates would be addressed in Delmarva's then-pending electric and gas base rate cases, Docket Nos. 17-0977 and 17-0978, respectively; and

WHEREAS, on January 19, 2018, the DPA filed a motion to direct regulated utilities to create regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the TCJA effective February 1, 2018 (the "Motion") while the Commission determines whether a utility's rates required reduction and, if so, the amount of such reduction. The DPA stated that in order to preserve the rate-reducing effects of the TCJA until the Commission approves new rates for the utilities, a regulatory liability must be created; otherwise, the prohibition against retroactive ratemaking would deprive ratepayers of the benefits accruing from the TCJA between its effective date and the date on which Commission-authorized new rates become effective. The DPA noted that the reduction of the federal income tax rate from 35% to 21% benefits ratepayers by reducing one of the elements of a utility's cost of service included in calculating a utility's revenue requirement by 14%; and

WHEREAS, on February 1, 2018, the Commission approved Order No. 9177, granting the Motion and directing all Delaware rate-regulated public utilities to create regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the changes in the federal corporate income tax laws, in order to protect ratepayer interests until such time as the TCJA benefits are appropriately reflected in customers' rates and to avoid retroactive ratemaking; and

WHEREAS, on March 29, 2018, Sussex Shores Water Company ("Sussex Shores") complied with Commission Order No. 9166 and submitted an estimate of its determination of the TCJA's effects on its cost of service for the most recent test year available (including new rate schedules) and proposed a procedure for changing rates to reflect those impacts. It further submitted a proposal for returning to ratepayers the regulatory liability created pursuant to Order No. 9177; and

WHEREAS, on January 31, 2019, in Order No. 9331, the Commission approved the proposed reductions in Sussex Shores' volumetric rates effective with usage on and after March 1, 2019, and approved the return of Sussex Shores' regulatory liability created pursuant to Order No. 9177 for the tax collected from February 1, 2018 through the effective date of these rate changes to ratepayers via a credit on ratepayers' bills during the period April through June 2019; and

WHEREAS, Sussex Shores was ordered to file its total Excess Deferred Income Tax Workpapers for an audit and true-up of its claimed EDIT by March 31, 2019;

WHEREAS, November 2, 2021, Sussex Shores submitted workpapers supported by Robert G. Morlock, its CPA, explaining that the EDIT amounts to $90,000, an amount separate and apart from the unauthorized regulatory asset of $152,000 that the Company has been carrying on its books since the 1990s[1]; and

WHEREAS, Sussex Shores is requesting to offset the EDIT amount of $ 90,000 with the regulatory asset amount of $ 152,000 that it currently has on its books; and

WHEREAS, Sussex Shores never sought or received Commission approval for the regulatory asset treatment of $152,000, making any offset of the EDIT obligation of $90,000 to its ratepayers inappropriate for our approval;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTES OF NOT FEWER THAN THREE COMMISSIONERS:

1. That Sussex Shores on or before July 1, 2022, shall start refunding the Excess Deferred Income Tax of $90,000 to its customers over a period of 6 years.

2. That the amount of the EDIT obligation shall not be offset against the unauthorized regulatory asset balance of $152,000.

[1] Although the regulatory asset was recorded by Sussex Shores following proper accounting guidance, the Commission never approved the creation of this regulatory asset for the taxable advances related for prior construction projects.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

Joann Conaway, Commissioner

Harold Gray, Commissioner

Manubhai "Mike" Karia, Commissioner

Kim F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary